

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 101-A

Case No. 92-5M/74-10F

(PUD Modification @ 1333 New Hampshire Avenue)

August 3, 1992

By Z.C. Order No. 101 dated December 13, 1974, the Zoning Commission for the District of Columbia approved, with conditions, a second-stage application for a planned unit development (PUD) and related change of zoning from SP to C-3-B (now known as SP-2 to C-3-C).

The PUD site measured 66,854 square feet in land area, and comprised all of the property in that portion of Square 115 that is bounded by Dupont Circle, 19th Street, Sunderland Place, and New Hampshire Avenue, N.W. The subject property included former lots 31-47, 50-56, 79, 81, 82 and 822 (now known as lots 79, 81, 82 and 85) in Square 115.

The PUD approval was for the construction of a mixed-use office building, the retention of the Euram and Sunderland Buildings, and the preservation of the Heurich Mansion and the Carriage House and garden.

The mixed use office building was to have a height of 12-stories/130 feet, a maximum floor area ratio (FAR) of 8.9, retail space on the first floor and part of the first cellar, and parking on four levels below-grade. The maximum FAR for the entire PUD site was 6.5.

The District of Columbia Board of Zoning Adjustment (BZA) approved further processing of the PUD in BZA Application Nos. 11875 and 11901. Around 1978, the mixed-use office building was constructed on Lot 85 and bears the address of 1333 New Hampshire Avenue, N.W.

Condition No. 7 of Z.C. Order No. 101 reads as follows:

"The new building shall be devoted to any use permitted in the C-3-B District, provided that the ground floor and one-half of the first cellar shall be devoted to retail commercial uses, provided further that such retail uses shall not include banks."

By letter dated April 17, 1992, counsel for the applicant (Oregon Public Employees Retirement System) filed an application with the

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Zoning Commission to modify Condition No. 7 of Z.C. Order No. 101, pursuant to the provisions of 11 DCMR 2407.9.

The applicant proposes to modify Condition No. 7, which will affect the mixed-use office building at 1333 New Hampshire Avenue. The modification provides for the deletion of existing Condition No. 7 and substitutes a new Condition No. 7, which reads as follows:

"The building shall be devoted to any uses permitted in the C-3-C District, subject to the following restrictions: The ground floor shall be devoted to commercial retail and service uses. The following uses shall be specifically prohibited in the first cellar of the building: bars and cocktail lounges (as principal uses), sexually oriented businesses and any use which requires a Class CT, Class CN, Class CX, Class DT, Class DN or Class DX retailer's alcoholic beverages license (or any successor license classifications.)

The District of Columbia Office of Planning (OP), by memorandum dated May 29, 1992, recommended that the application be approved without a public hearing. Pursuant to 11 DCMR 3011, OP in its preliminary report stated the following:

"Because the applicant is requesting this modification of Condition No. 7 of Zoning Commission Order No. 101 as a result of a neighborhood request, the Office of Planning is of the opinion that this application can be approved without the need for a public hearing. The parties to the original application included the National Trust of Historic Preservation, Don't Tear It Down, Inc., the Dupont Circle Citizens's Association, and the original applicant -- Dupont Circle Joint Venture. Both the National Trust for Historic Preservation and Don't Tear It Down, Inc. supported the original application. The Dupont Circle Citizen's Association opposed the original proposal. In the present case, the Dupont Circle Citizen's Association has taken no position in support of or in opposition to the proposed modification. Advisory Neighborhood Commission 2B supports the current proposed modification. In fact, the Office of Planning believes that all community issues related to this proposal are already a part of the record. In addition, restricting retail uses to preclude those which require particular types of alcoholic beverage licences would not appear to have an appreciable adverse impact on the possibility of other active retail uses occupying the first cellar level of the building. The Office of Planning is of the opinion that the record in this case would not benefit as a result of a public hearing. All the issues pertaining to the proposed PUD modification are already a part of the record. At the request of the neighborhood, the

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applicant has removed an objectionable use from the building and has agreed to accept certain restrictions on uses requiring particular types of alcoholic beverages licenses. As a result, ANC 2B has informed the Zoning Commission of its support for this proposal without a formal hearing action. Accordingly, the Office of Planning recommends approval of this proposed PUD modification without a public hearing."

Advisory Neighborhood Commission 2B, by letter dated February 13, 1992, supported the modification without a public hearing.

No additional comments were received in support of or in opposition to the application.

On June 8, 1992 at its regular monthly meeting, the Zoning Commission considered the application, the OP report, and the ANC 2B letter to determine whether to authorize a public hearing or other proceeding, pursuant to 11 DCMR 3012.2.

At that same meeting, the Acting Director of the Office of Zoning (OZ) suggested that no public hearing was necessary because no substantial changes have occurred since the approval of the PUD, and that the requested modification was of minor consequence.

The Commission concurs with the recommendation of OP and the position of ANC 2B and OZ, and believes that the application should be approved without a public hearing.

The Zoning Commission further believes that the proposed modification is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

The proposed action of the Zoning Commission to approve the application without a public hearing was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, report dated July 30, 1992 found that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of a modification to Z.C. Order No. 101 without a public hearing, and specifically to the previously approved plans, subject to the following guidelines, conditions, and standards:

1. The PUD modification shall be developed in accordance with the architectural plans of RTKL, marked as Exhibit No. 5 of the record, as modified by the guidelines, conditions and standards of this order.
2. The building shall be devoted to any uses permitted in the C-3-C District, except that the ground floor shall be devoted to commercial retail and service uses.
3. The following uses shall be specifically prohibited in the first cellar of the building: bars and cocktail lounges (as principal uses), sexually oriented businesses and any use which requires a Class CT, Class CN, Class CX, Class DT, Class DN or Class DX retailer's alcoholic beverages license (or any successor license classifications.)
4. No building permit shall be issued for the project until the applicant has recorded a PUD covenant (or Notice of Modification) in the land records of the District of Columbia, satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant (or Notice of Modification) shall bind the applicant and successors in title to construct on and use this site in accordance with this order or any amendments thereof.
5. After the recordation of said PUD covenant, (or Notice of Modification), the applicant shall immediately file a certified copy of the PUD covenant (or Notice of Modification) with the Office of Zoning for the record of the Zoning Commission.
6. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the applicant has satisfied Condition Nos. 4 and 5 of this order.
7. The PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in subsection 11 DCMR 2407.2 and 2407.3 of the Zoning Regulations. Construction shall start within three years of the effective date of this order.
8. Pursuant to D.C. Code Section 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the Applicants are required to comply with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with these

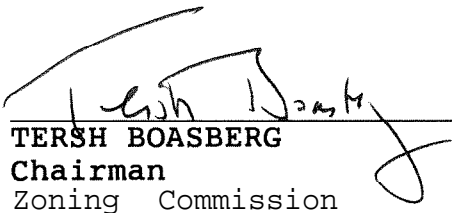
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provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the applicants fail to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public meeting on June 8, 1992: 4-0 (William L. Ensign, John G. Parsons, Lloyd D. Smith and Tersh Boasberg, to approve without a public hearing - Maybelle Taylor Bennett, not present, not voting).

This order was adopted by the Zoning Commission at its public meeting on August 3, 1992 by a vote of 3-0 (William L. Ensign and Tersh Boasberg, to adopt and John G. Parsons, to adopt by absentee vote - Maybelle Taylor Bennett, not voting, not having participated in the case and Lloyd D. Smith, not present, not voting).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; specifically on AUG 21 1992


TERSH BOASBERG
Chairman
Zoning Commission


MADELIENE H. ROBINSON
Acting Director
Office of Zoning

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